

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

King's Walk Condominium Association	:	
-vs-	:	
Commonwealth Edison Company	:	08-0264
	:	
Complaint as to refund the balance of	:	
overcharges/overpayments for electricity in :	:	
Rollowing Meadows, Illinois.	:	

PROPOSED ORDER

By the Commission:

I. Introduction

King's Walk Condominium Association is a large condominium complex with 900+ units and eleven buildings. See, e.g., Tr. 73-74; 151. It is "all-electric," meaning that this complex is heated by electricity. From 1975 until November 14, 2006 Commonwealth Edison Company ("ComEd") has supplied King's Walk Condominium Association with electricity at Rate 14, which was the same rate as that which ComEd charged the residents at King's Walk. Then, on November 14, 1996, ComEd switched six of King's Walk's seven accounts to Rate 6, which is a commercial rate. In 2006, management at King's Walk discovered that ComEd was charging it the wrong rate and King's Walk contacted ComEd. ComEd acknowledged in writing that it had billed King's Walk the wrong tariff. See Amended Complaint Ex. F.¹ ComEd refunded more than \$33,000, which, ComEd represented, was for the period of time between January 22, 2005 and July 20, 2006.

However, in January of 2007, ComEd again switched King's Walk's accounts to a commercial rate. As the evidence presented established, (see below) since that time, ComEd has switched King's Walk to several different rates, many of which, were commercial rates and many of which, did not provide King's Walk with the supply charge discount for all-electric space heat.

King's Walk challenges the validity of ComEd's imposition of some of those rates upon it. Three matters are at issue in this proceeding. The first is King's Walk's claim that

¹ ComEd denies that Ex. F constitutes an admission on its part that it charged King's Walk the wrong tariff. See, ComEd Reply Brief at 3. However, there are letters in Ex. F from ComEd indicating that the refund checks were for "corrected billing." Given that King's Walk's complaint at that time was that ComEd was charging it the wrong rate, these letters constitute indicia that ComEd acknowledged, in those refund letters, that it had charged King's Walk the wrong rate. See, Amended Complaint, filed on February 23, 2009, Ex. F.

ComEd incorrectly computed Rider CABA² credits for King's Walk. The second is that King's Walk was incorrectly billed for having seven accounts, even though it should have been billed on one account, as there are charges that are made on a per account basis, such as for meters. Lastly, King's Walk asserts that ComEd switched its electric accounts into rates that were inapplicable to residential property with space heat, thereby increasing King's Walk's charges for electricity, in contravention to law and ComEd's tariffs. Tr. 65.

Previously, ComEd moved to dismiss most of these claims, based upon the two-year statute of limitations in Section 9-252 of the Public Utilities Act (the "Act"). On July 27, 2011, this Commission issued a final Interim Order dismissing all of the claims that accrued before April 11, 2006. In that Order, the Commission concluded that claims accruing before April 11, 2006 occurred outside the two-year statutory period in Section 9-252 of the Act and were therefore untimely filed.³ In so ruling, the Commission determined that those rate switches were evident on the electric bills, making Section 9-252 and not Section 9-252.1 of the Act the applicable limitations period. See Interim Order of July 27, 2011 at 4-5.

An evidentiary hearing convened on October 3, 2012. Testifying on behalf of King's Walk were: Deborah Habeck, the President of the King's Walk's Condominium Association from 2004 through the present time; Jeremy Quattrochi, the Property Manager for King's Walk; and Charles Prettyman. Testifying on behalf of ComEd were David Geraghty and John Leick. The following Complainant exhibits were entered into evidence: all of King's Walk's electric bills from August of 2006 to the end of 2012; Rider BES-R; a chart detailing the overcharges that King's Walk alleges to have occurred from the time period commencing in August of 2006 and through the present time; a chart breaking down King's Walk's Rider CABA calculations; and Mr. Prettyman's curriculum vitae. ComEd entered Rider CABA into evidence, along with its Rider CABA calculations.

Although King's Walk's bills were entered into evidence, on March 11, 2013, the Administrative Law Judge (the "ALJ") issued a ruling requiring King's Walk to file annual totals for the years in question (2007-2012 regarding the over-billing claim and 2006-2012 regarding the claim contesting the propriety of imposing seven accounts). King's Walk filed a response to this ruling on March 21, 2013. ComEd filed Objections thereto on April 1, 2013.⁴

² CABA is Common Area Billing Adjustment.

³ The original formal Complaint was filed on April 11, 2008.

⁴ In its Objections, ComEd did not dispute the veracity of the information that King's Walk provided in its March 21, 2013 filing. It did, however, admit that two King's Walk accounts "were not switched to space heating as it should have been," and that it overbilled King's Walk on these two accounts. See, ComEd Objections at 5. ComEd argued therein, however that distribution charges should be deducted from King's Walk's figures and also that there were cancellations and re-billings that King's Walk did not account for. These arguments were not considered because ComEd provided no evidence as to the distribution charges or the cancellations and re-billings. The ALJ's review of many, many of King's Walk's bills (See, pp. 13-14 herein) did not reveal the existence of any cancellations and re-billings.

II. The Applicable Law

Before examining the evidence adduced at trial, it is necessary to set forth the rather odd history of ComEd's electric rates for the common areas in condominium complexes.

In Docket 05-0597, a ComEd rate case, the Commission concluded that condominium common areas should be reclassified from residential to non-residential. However, this Order did not require ComEd to charge condominium associations, which by definition are not-for-profit organizations, the higher commercial rates; it merely required ComEd to reclassify condominium customers.⁵ See Docket 05-0597, Order of July 26, 2006, at 8. Generally, commercial rates are higher than residential rates. See, e.g., Tr. 251.

Later, ComEd filed Rider CABA-Common Area Billing Adjustment, which gave condominium associations some relief from the increase that was apparently imposed by ComEd due to its interpretation of the language in the final Order in Docket 05-0597 to require it to charge condominium associations higher commercial rates. Rider CABA became effective on May 31, 2007. Rider CABA provided a one-time billing adjustment for those non-residential retail customers that were classified on January 1, 2007 as residential customers, which are condominium associations. The billing adjustment's purpose is to "reduce such nonresidential retail customer's expected annual percent increase for electric service from 2006 to 2007 to twenty-four percent (24%)." ComEd Ex. 1.0.

Subsequently, the General Assembly enacted Section 16-103.1 of the Public Utilities Act. 220 ILCS 5/16-103.1. This statute became effective on August 28, 2007. It requires ComEd to provide rates to condominium associations that "do not exceed on average the rates offered to residential customers on an annual basis." It also reinstated the residential all-electric discount for condominium associations. *Id.*

III. The Evidence Adduced

Ms. Habeck has been on the Board of Directors of King's Walk Condominium Association for approximately six years. She is currently the President of King's Walk and she was the President in 2005. Tr. 71. She testified that, to her knowledge, no one at King's Walk asked ComEd to be switched to a commercial rate. Tr. 75-76.

She testified that in September of 2005, King's Walk complained to ComEd about billing mistakes. As a result, ComEd refunded King's Walk approximately \$35,000, representing billing errors for an 18-month period of time. Tr. 107-08. King's Walk also asked several times to be billed on one bill, as opposed to seven bills, to no avail. King's

⁵ The Condominium Property Act requires all condominium associations to be not-for-profit corporations. 765 ILCS 605/18.3.

Walk later complained to ComEd about the fact that it did not receive any Rider CABA credits. *Id.* at 77-78.⁶

In January of 2007, ComEd placed all of King's Walk's accounts on a commercial rate. Tr. 81. At that time, King's Walk made several attempts to be switched to the lower residential rate. *Id.* at 85, 90, 99. Just before January 2, 2007, all of King's Walk's seven accounts were on Rate 14-Residential Heat Multiple (units) Without Demand. The commercial rates that ComEd placed the King's Walk accounts on in January of 2007 are higher than Rate 14 charges. *Id.* at 136, 137.

Mr. Quattrucci was the property manager for King's Walk from 2005-07 and 2009 to the present. He testified that it is his job to pay the bills for King's Walk. Tr. 94, 111. He manages ten other residential condominium properties. ComEd bills all of those other ten condominium properties on one bill with the pertinent subcategories on the one bill. Tr. 95-96. He never authorized ComEd to switch King's Walk to a commercial rate. *Id.* at 98-99.

Mr. Prettyman worked for ComEd from 1980 to 1993. He was a senior account executive at ComEd and was responsible for large customer rates, including the rates for residential development customers. In that capacity, his duties required him to know the rates and tariffs and the metering applications for dealing with any size of customer. Tr. 124-26. From 1993 to 2005, Mr. Prettyman was the President and founder of Corporate Energy Consultants. In that capacity, he performed rate and meter evaluation for electric and other utility bills. *Id.* at 126-9.

Mr. Prettyman examined King's Walk electric bills from 2006 through the present time. Tr. 134-136. He opined that in May of 2006, King's Walk was billed for one account at the wrong rate. *Id.* at 136, 138. This account was billed at Rate 6-Demand Billing Commercial, which is for small commercial non-residential property with a demand charge. According to Mr. Prettyman, this rate is not for residential customers. *Id.*

In February of 2007, one of King's Walk's accounts, account 32012, was switched to a rate called Commercial Blended Watt Hour Without Space Heat and In Lieu of Demand. In Mr. Prettyman's opinion, that rate was not the correct rate for King's Walk. *Id.* at 138. This is because the rate billed is a commercial rate. Additionally, a commercial blended watt hour rate is an in lieu of demand charge. An in lieu of demand charge has to do with whether a commercial customer has a demand meter. To qualify for an in lieu of demand charge, the customer must have less than ten kilowatts of demand and less than 2,000 kilowatt hours of use in the previous three months. Otherwise, the customer was required to have a demand meter, and King's Walk did not have a demand meter. Tr. 139.

⁶ ComEd disputes the veracity of this portion of Ms. Habek's testimony, stating, essentially, that she did not have personal knowledge of the contact with ComEd because she did not make the phone calls herself. ComEd Reply Brief at 3. However, ComEd did not object to this testimony; it has therefore waived its right to contest its veracity. Moreover, Ms. Habeck was the President of King's Walk Condominium Association at that time. Presumably, therefore, she possessed knowledge of its business affairs.

Mr. Prettyman also pointed out that King's Walk was billed at a rate for a customer without space heat. However, King's Walk had space heat, exclusively. The rate for customers without space heat is much more expensive than the rate for customers with electric (space) heat. Mr. Prettyman, looking at one of King's Walk's seven accounts, stated that the average kilowatt hour for the time period in question for customers with space heat was between \$0.045 and \$0.055 per kilowatt hour during the heating season, but the charge for electricity without space heat was \$0.13 per kilowatt hour. *Id.* at 139-40.

The next five King's Walk accounts, Mr. Prettyman continued, were placed on a rate called Residential Blended Space Heat Multiple (units) With No Demands in January of 2007. In Mr. Prettyman's opinion, these accounts were placed in the wrong subgroup. Tr. 141. Rate BES-R gives a summer residential non-electric space heating customer supply charge of .07320 per kilowatt hour. However, King's Walk is an electric space heating customer, which should have been at .04935 per kilowatt hour in the summer. In the wintertime, King's Walk should have been at the residential electric space heating customer subgroup at .04419 per kilowatt-hour. However, King's Walk was in the non-electric (heat) subgroup. *Id.* at 141-42.

Mr. Prettyman stated that the commercial rate is about 50 percent higher than the residential rate. Tr. 143, 146-47. There are also subgroups within the commercial and residential rates. There also is a summer and non-summer differential, watt-hour non-electric space heating; a small load non-electric space heating; non-residential electric space heating; and also residential electric space heating. Tr. 148-49. Mr. Prettyman testified that King's Walk would fall into the residential space heating customer subgroup. This is because King's Walk is a residential electric customer with space heating. Tr. 149-50.

Mr. Prettyman is aware of Section 16-103.1 of the Public Utilities Act. This statute avoids the excessive charges that electric heat customers would otherwise face. Tr. 150. This statute is specifically for condominium associations. It requires ComEd to return electric space heat customers to "the same rate they were before" (January of 2007). Tr. 151-52.

For the King's Walk's account ending in 014, on the bill dated January 2, 2007, the rate charged was Residential Blended With Space Heat Multiple (units) with an energy supply charge of \$0.047, which was the applicable rate. Tr. 144-45. ComEd continued to bill this account at this rate for a few months and then the bill for the period of time from April 20, 2007 to May 19, 2007 was billed at a Commercial Blended rate with an energy supply charge of \$0.07217. Mr. Prettyman opined that this rate is not the right rate for King's Walk because it is a commercial rate and it is not applicable to a residential customer. It also does not include the space heating discount. Tr. 146-153.

The other six King's Walk accounts were also switched at this time to a commercial blended rate. The account that ends in 017 was switched to a Commercial Blended Watt Hour rate with In Lieu of Demand charges. Then, on the June to July of 2007 electric bill, ComEd changed the rate for this account to Commercial Blended rate with Space Heat. Tr. 155-56.

Regarding the King's Walk account ending 018, service to this account was billed at the Residential Blended Space Heat Multiple (units) rate from January of 2007 until April 20, 2007. In April of 2007, however, the rate for this account was switched to Commercial Blended Small Load Non-Electric Space Heat customer subgroup. Tr. 159-60.

In fact, from January 2, 2007 until the time of the evidentiary hearing, King's Walk's seven accounts were changed at least 26 different times. These switches were back and forth between residential to commercial, commercial to another commercial rate, sometimes with space heat and sometimes without space heat. *Id.* at 157. In fact, 18 of those switches were to rates that did not include space heat, even though King's Walk always had space heat. Tr. 158.

Mr. Prettyman verified the correctness of the kilowatt costs on the spreadsheet that was entered into evidence (King's Walk Ex. 5.0). In order to determine that the figures on that spreadsheet were accurate, he examined many, many electric bills. However none of the bills that he reviewed had a cancellation or a re-bill after ComEd switched an account to another rate. Tr. 196-97. In his opinion, \$42,238 represents the kilowatt cost that King's Walk should have paid, including 4% interest, relative to what was actually paid. Tr. 165-66.

Rider CABA is a formulaic billing adjustment in the form of a credit that is given to condominium associations. It uses the energy supply charge for a few years and compares those charges to 124% of that charge. The difference is the refund or the credit to the customer. Tr. 173. King's Walk already received approximately \$5,053 in Rider CABA credits. However, Mr. Prettyman opined, when calculating Rider CABA credits for King's Walk, ComEd used the wrong energy supply charge. Mr. Prettyman testified that it appeared that ComEd used the energy supply charge for residential electric space heating customers when King's Walk was actually billed as a non-residential space heating customer for the time period defined in Rider CABA.⁷ Tr. 175; 190. He stated that the balance due King's Walk for Rider CABA credits is \$5,053.89. Tr. 177.

Mr. Geraghty is a manager in ComEd's electric supplier services department. Previously, he was manager of rate administration at ComEd. In that capacity, he administered the rates for ComEd, which involved implementation of the rates and the policies that ComEd used for its rates. Tr. 213-14.

In January of 2007, Mr. Geraghty was working in the rates department at ComEd. At that time, ComEd changed the names of some of its rates from general numbers to letters. Tr. 218. Rate 14, which gave space-heating customers a certain discount, was eliminated. On January 2, 2007, Rate 14 was no longer in existence. Tr. 219. Rate Xix was also discontinued at this time. *Id.* at 221. Also at that time, condominium buildings were transferred over to commercial rates, for their delivery services, as well as a commercial supply rate. Tr. 219-20.

⁷ Rider CABA credits are determined using, in part, the charges under the "then-effective tariffs applicable to the . . . customer" (condominium association) as well as the charges made pursuant to those tariffs in 2006., and an estimate of that customer's 2007 charges See, ComEd Ex. 1.0.

He further testified that when Section 16-103.1 of the Public Utilities Act became effective, ComEd left these customers on the commercial delivery service rate, either BES-NRA or BES-NRB. The condominium associations that were formerly Rate 14 accounts, however, were billed at the residential electric supply rate for the supply portions of their electric bills. Tr. 221-22. He testified that this methodology was used with all of King's Walk's accounts, except for two accounts which were inadvertently overlooked. Tr. 222. According to Mr. Geraghty, with the exception of two accounts, the BES rates were applied to all of the King's Walk accounts. *Id.*

According to Mr. Geraghty, Rider CABA was also implemented at around the same time as Section 16-103.1. It provides that the (condominium association) customer would pay no more than what it would have paid on the residential rate, plus 24%. Tr. 223.

Mr. Geraghty testified that the reason why the King's Walk bills reflected different rates was because the accounts that were billed on the previous Rate 14 were transferred over to a residential rate initially, at the beginning of the year. There was a short period, he opined, when the transfer occurred from the old rate to the new BES rate. Tr. 224.

Mr. Geraghty further stated that the King's Walk accounts continued to be billed on a commercial rate up until the time when Section 16-103.1 went into effect. When Section 16-103.1 of the Public Utilities Act became effective, the commercial supply rate was changed to the residential supply rate. Tr. 225-26. Also at that time, one (King's Walk) residential bill, the one that continued to be a residential account for the first portion of 2007, was converted to the commercial rate with the residential electric space heating supply rate applied to it. *Id.* at 225. However, rates BES-NRA and BES-NRB were created in response to Section 16-103.1. Those rates provide the electric space heating discount to condominium buildings and they place condominium associations in a position that is less than or equal to the rate that the residential customer would otherwise have. He further testified that in May of 2008, the two BES Rates, BES-NRA and BES-NRB were merged into a single rate called BES. *Id.* at 225.

In Mr. Geraghty's opinion, King's Walk's calculations regarding any refund due it were not accurate because some bills were cancelled and then a new rate was applied. Tr. 227-28. When presented with some of King's Walk's electric bills where a change in rate occurred, however, Mr. Geraghty could not find a cancellation and re-bill on those bills. Tr. 236-38. Mr. Geraghty stated that he believed that there were cancellations and re-billing because he saw some information on ComEd's billing system. Tr. 238. Mr. Geraghty did not testify that he ever saw any of King's Walk's bills.

Mr. Geraghty also opined that before January 2, 2007, King's Walk should have been billed at the residential space heating rate. Tr. 231. In Mr. Geraghty's opinion, after January 1, 2007, King's Walk was a commercial customer. Tr. 242. Mr. Geraghty further opined that it was correct to place King's Walk on a Commercial Blended Watt Hour Space Heat rate with In Lieu Of Demand charges, if King's Walk had a watt-hour meter and also if it used 2,000 kilowatt hours or more in each bill period for up to a three-month bill time. Tr. 246-7. However, ComEd presented no evidence establishing that King's Walk actually had a watt-hour meter.

Regarding Rate BES-NRA, he averred that the supply charge for residential electric space heat customers is lower than the supply charge for non-residential electric space heat customers. Tr. 252. Also, the residential space heating customer subgroup pays less than the medium load non-electric space heating customer and the small load and the watt-hour non-electric space heating customer subgroups. Tr. 252. The supply charge for this rate is less than that for all other subgroups. Tr. 254. ComEd also has both single family and multi-family space heating rates. Tr. 253. After January 2, 2007, some of King's Walk's accounts were not charged the energy supply charge that was applicable to residential space heating customers. Tr. 256, 258.

Mr. Leick is a senior rate administrator for ComEd. He did the Rider CABA calculations on behalf of ComEd on the King's Walk accounts. Tr. 268. He also prepared ComEd Ex. 1, which contains an explanation of ComEd's Rider CABA calculations for the King's Walk accounts. Tr. 273-74. In calculating the Rider CABA credits, he based his (2006) calculations on Rate 14, which was in existence in 2006. Tr. 275. Mr. Leick stated that when he made these Rider CABA calculations, he followed the formula in the Rider CABA Tariff. ComEd did issue Rider CABA credits to King's Walk for five of its seven accounts. Tr. 277-78.

Mr. Leick opined that King's Walk's Rider CABA calculations (King's Walk Ex. 6.0) do not follow the formula in the Rider CABA tariff. Tr. 280-81. He stated that the tariff called for the total bill amount, as opposed to a per kilowatt hour rate, which was what was used by the person who prepared King's Walk Ex. 6.0 regarding Rider CABA credits. Tr. 282.

Mr. Leick further testified that every year, in around June or July, after new supply charges are generated, his staff performs a calculation on the condominium accounts that are still with ComEd for supply charges and they calculate usage for all those accounts under the non-residential rates and under the residential rates. The purpose of this calculation is to confirm that the non-residential rates are still lower than the residential rates. Tr. 291. According to Mr. Leick, their findings have been that the non-residential rates are lower than the residential rates. Tr. 291-92.

When making the Rider CABA calculations for the King's Walk accounts, Mr. Leick assumed that the King's Walk accounts were billed on Rate 14 in 2006. Tr. 303-04. Mr. Leick did not know what rate ComEd was charging King's Walk on its accounts for the applicable time period for Rider CABA calculations. Tr. 304. He did not know that King's Walk was not being billed on Rate 14 for part of 2006. *Id.* Mr. Leick admitted that, if the King's Walk accounts were not on Rate 14 though 2006, the calculation would be different than the one he performed. Tr. 305.

Mr. Leick also testified that he thought that ComEd placed King's Walk on rate BES-NRB within the first bill in 2007. Tr. 305. He also stated that some of the King's Walk accounts were billed at non-residential rates in 2007, but he did not have access to corrected bill images in ComEd's computer system. Tr. 306. However, when presented with the January through April bills for one of King's Walk's accounts, he admitted that the supply charge was the higher non-residential supply charge. Tr. 309-10. Also, for the two accounts where ComEd issued no Rider CABA credits at all, he acknowledged that this

was in error but stated that ComEd issued no refund on those accounts because “this is being litigated.” Tr. 310; 312.

IV. The Parties’ Arguments

a. The Correct Application of Section 16-103.1 of the Public Utilities Act

Section 16-103.1 of the Public Utilities Act, which became effective on August 28, 2007, provides that:

Tariffed service to Unit Owners' Associations. An electric utility that serves at least 2,000,000 customers must provide tariffed service to Unit Owners' Associations, as defined by Section 2 of the Condominium Property Act, for condominium properties that are not restricted to nonresidential use *at rates that do not exceed on average the rates offered to residential customers on an annual basis*. Within 10 days after the effective date of this amendatory Act, the electric utility shall provide the tariffed service to Unit Owners' Associations required by this Section and *shall reinstate any residential all-electric discount applicable to any Unit Owners' Association that received such a discount on December 31, 2006*. For purposes of this Section, “residential customers” means those retail customers of an electric utility that receive (i) electric utility service for household purposes distributed to a dwelling of 2 or fewer units that is billed under a residential rate or (ii) electric utility service for household purposes distributed to a dwelling unit or units that is billed under a residential rate and is registered by a separate meter for each dwelling unit.

220 ILCS 5/16-103.1; emphasis added. Thus, pursuant to this statute, ComEd was required to provide all-electric condominium associations with the all-electric discount that existed on December 31, 2006. Also, ComEd was required by statute to provide electricity to condominium associations at a rate that does not exceed the rate charged to condominium residents.

King’s Walk’s Position

In support of its argument that the manner in which ComEd billed King’s Walk violated this statute, King’s Walk points to a few undisputed facts. King’s Walk states that it is not disputed that, as a condominium association, King’s Walk is a “Unit Owner’s Association” within the meaning of Section 16-103.1 and also, that it was not restricted to non-residential use. Also, it is not disputed that all seven of its accounts were taking electric service at the “all electric” discounted residential space heat rate, Rate 14, in December of 2006. Further unchallenged is the fact that ComEd’s three BES rates, BES-NRA, BES and BES-NRB provide for different, lower rates for the residential space heating customer subgroup than for other non-residential (commercial) customer subgroups. King’s Walk Posttrial Brief at 5-6. It avers that the evidence presented established that on January 2, 2007, the following occurred with regard the King’s Walk electric accounts:

--Account number 499363212 was switched to the commercial blended watt-hour without space heat rate;

--Account number 4993693015 was switched to the commercial blended without space heat rate;

--The other five King's Walk accounts were switched to residential space heating, but within four or five months were switched to commercial rates, either with or without space heating.

King's Walk Posttrial Brief at 6; ComEd Ex. 5.0.

King's Walk further contends that ComEd erred in charging it at certain times as a customer who did not have space heating. Specifically, it states, the supply charge for the residential electric space heating is substantially lower than the supply charges for other customer subgroups. As an example, it continues, the summer supply charge for a residential customer under BES-NRB is \$.04935, but is \$.0727 for a nonresidential customer. It further avers that ComEd's post-January 2, 2007 designated nonresidential tariffs (Rates BES-NRA and BES-NRB) expressly provide for a supply charge to residential customers that is exactly the same as the supply charge under ComEd's residential tariff (Rate BES-R). King's Walk concludes that it is inarguable that ComEd did not apply the correct supply charge (the Residential Electric Space Heating Customer Subgroup Charge pursuant to its non-residential tariffs) because ComEd charged King's Walk the substantially-higher Non-Residential Space Heating Group Supply Charge. King's Walk points out that it never asked to be placed on commercial rates. King's Walk Posttrial Brief at 7-8, 9.

ComEd's Position

ComEd concludes, essentially, that no refund is due King's Walk for charging the wrong rate. ComEd posits that the amounts at issue are not substantial; according to ComEd, because they are only about \$54,000, excluding any refund regarding Rider CABA credits. ComEd Posttrial Brief at 3. It also argues that the \$54,181.84 that King's Walk argues is owed due to the constant rate switching is not accurate because the spreadsheet containing the calculations used to arrive at this figure (King's Walk Ex. 5.0) does not take cancellations and re-billing into account. ComEd Posttrial Brief at 26. ComEd additionally cites the final Order in Docket 05-0597, discussed above, which required reclassification of condominium property. *Id.* at 26-27.

It also argues that Section 16-103.1 does not specify what rate condominium associations should be charged. In support, it cites the testimony of its witness Mr. Leick who testified, essentially, ComEd reviews the accounts of condominium associations and ensures that this group of customers is not being overcharged. ComEd also avers that the demand charges that it imposed on the King's Walk accounts should have been offset with distribution charges, which, it alleges, King's Walk did not do when calculating the amount of the refund due to King's Walk. ComEd Posttrial Brief at 27-28.

Analysis and Conclusions

ComEd's argument that it was required by this Commission (in the final Order in Docket 05-0597) to charge condominium associations higher commercial rates is belied by the fact that ComEd did not just switch the seven accounts to one or two commercial rates. If it were true, as ComEd argues, that it had to (due to a Commission order requiring it to do so) switch all condominium associations to higher commercial rates, then logically, ComEd would have switched all condominium properties to one or two commercial rates, and it would have kept those accounts on one or two commercial rates, which it did not do. In fact, King's Walk has been switched to several different rates, some of which, are clearly inapplicable to residential condominium associations. Also, ComEd made those switches approximately 28 times.

Moreover, after King's Walk complained about the fact that it did not receive Rider CABA credits, ComEd was clearly on notice that King's Walk was a residential condominium complex, or else, it would not have given King's Walk Rider CABA credits, which are only applicable to condominium associations. Yet, King's Walk continued to be billed by ComEd on commercial rates after the time when it issued those credits.

Additionally, as was mentioned earlier, the final Order in Docket 05-0597 does not state what ComEd represented it does. That Order required re-categorization of condominium associations; it did not require ComEd to charge condominium associations the higher, commercial rates.

Also, the effective date of Section 16-103.1 of the Public Utilities Act is August 28, 2007. There would be no need for this statute, if ComEd was not overcharging condominium associations. It requires ComEd to bill condominium properties that are not restricted to nonresidential use at rates that do not exceed on average the rates offered to residential customers on an annual basis. 220 ILCS 5/16-103.1. As shall be set forth below, the evidence presented establishes that, in many, many instances, ComEd violated this statute.

Further, Rate BES-R came into effect on February 13, 2008. This rate clearly applies to condominium associations. Rate BES-R clearly contemplates the change in categorization of condominium associations as commercial while retaining residential supply charges and the space heating discount. There would be no need for this rate, if ComEd was not overcharging condominium associations before that time.

Additionally, as shall be set forth below, many of King's Walk's accounts were not placed on this rate after the effective date of this rate, February 13, 2008. It is undisputed that commercial rates are higher than residential rates and that space heating customers like King's Walk are entitled to supply charge that is lower than that for customers that do not heat their premises with electricity.

When arguing that King's Walk was not overcharged due to being billed on the wrong tariffs, ComEd cites the testimony of its witness Mr. Leick who testified that his group at ComEd ensures that ComEd is not overcharging condominium associations. However, Mr. Leick never stated that his group at ComEd reviews the condominium

associations' bills when they are billed at commercial rates, or at rates that do not apply to customers who should receive the space heating discount to determine whether these customers are entitled to this discount. In fact, he never stated what rate his group determines condominium associations are entitled to, or how his group determines that a customer is a condominium association (and therefore entitled to this review) or whether his group looks to see if a condominium association that takes space heat is being billed at the residential space heat discount.

Mr. Leick also testified that he did not have access to the corrected bill images in ComEd's computer system. Tr. 306. Because Mr. Leick did not have access to the accurate information regarding King's Walk's accounts, his testimony in this regard does not aid ComEd.

In fact, the only way that Mr. Leick's testimony jives with reality is if his group at ComEd reviewed the BES-R condominium customers, or a latter version of the BES rate, as applied to condominium associations. At a minimum, any other interpretation of his testimony, which lacks specificity, and possibly factual foundation, would be to interpret his testimony in a manner that equates the higher commercial rates with the lower residential rates and does not take the space-heating discount into consideration. However, the evidence here, as is set forth above, establishes that commercial rates, and rates for non-space heating customers, are higher than the rates for residential customers. It would make little sense for ComEd employees to even bother to make such calculations, if Mr. Leick's group was making its calculations with regard to condominium associations that were on commercial rates.

It should be noted that ComEd witness Mr. Geraghty's testimony that five of the King's Walk accounts were placed on BES rates (Tr. 222) is not borne out by the actual bills. As well, Mr. Leick's testimony that ComEd placed King's Walk on rate BES-NRB within the first bill in 2007 is not born out by the facts. (See, Tr. 305). BES rates became effective on February 13, 2008, but several Kings Walk accounts were not billed on these rates for several accounts in March of 2008. A simple review of the some of the bills proves otherwise. See, e.g., King's Walk Ex. 1 regarding the account ending in 012, the bills dated January 29, 2007, billing at the Commercial Blended Watt-Hour rate; the same for the bill dated February 21, 2007; March 22, 2007; April 20, 2007; May 21, 2007; June 20, 2007; July 20, 2007 (but giving a discount for space heat); August 20, 2007 (but giving a discount for space heat); September 18, 2007 (but giving a discount for space heat); October 16, 2007 (but giving a discount for space heat) November 14, 2007 (but giving a discount for space heat); December 20, 2007 (but giving a discount for space heat); January 23, 2008, (but giving a discount for space heat) February 21, 2008 (but giving a discount for space heat) March 20, 2008 (but giving a discount for space heat); April 18, 2008 (but giving a discount for space heat); May 19, 2008 and June 17, 2008, billing at the Commercial Demand 0-100 Kilowatts rate (but giving a discount for space heat) .

Additionally, for the account ending in 010, the bill dated May 21, 2007, billing at the Commercial Blended rate; the same for the bill dated June 20, 2007; July 20, 2007 (but giving a discount for space heat) August 20, 2007 (but giving a discount for space heat); September 18, 2007 (but giving a discount for space heat); October 16, 2007 (but giving a discount for space heat); November 14, 2007 (but giving a discount for space heat)

December 11, 2007 (but giving a discount for space heat); January 23, 2008 (but giving a discount for space heat); February 21, 2008 (but giving a discount for space heat); March 20, 2008 (but giving a discount for space heat); April 18, 2008 (but giving a discount for space heat);

Further, for the account ending in 014, the bills dated January 23, 2007, billed King's Walk at the residential space heat multiple (units); but the bills dated February 21, 2007, March 22, 2007; April 20, 2007; billed at a blended residential space heat multiple (units) rate; but then the bills date May 21, 2007; June 20, 2007; July 20, 2007; August 20, 2007; September 18, 2007; October 16, 2007; November 14, 2007; December 19, 2007; January 23, 2008; February 21, 2008; April 18, 2008; all billed at a commercial blended rate with 0-100 Kilowatts. Then, on the bill dated May 19, 2008; this account was switched to a commercial demand with 0-100 Kilowatts. This continued for the following bills:

June 17, 2008; July 22, 2008; August 20, 2008; September 18, 2008; October 20, 2008; November 17, 2008; December 19, 2008; January 22, 2009; February 18, 2009; March 23, 2009; April 23, 2009; May 21, 2009; June 22, 2009; July 22, 2009; August 20, 2009; September 21, 2009; October 20, 2009; November 18, 2009; December 21, 2009; January 22, 2010; February 22, 2010; March 23, 2010; April 21, 2010; May 20, 2010; June 21, 2010; July 21, 2010; August 18, 2010; September 20, 2010; October 19, 2010; November 17, 2010; December 27, 2010; January 24, 2011; February 22, 2011; March 23, 2011; April 21, 2011; May 20, 2011; June 21, 2011; and July 21, 2011.

Finally, with regard to the account ending in 017, the bill dated July 20, 2007 billing at the Commercial Blended Watt-hour rate with space heat; and the bills dated August 20, 2007, September 18, 2007; October 16, 2007; November 14, 2007; December 19, 2007; January 23, 2008; February 21, 2008; March 20, 2008; ;April 18, 2008; May 19, 2008; June 17, 2008; July 22, 2008; August 25, 2008; and September 18, 2008 all billing at this rate.⁸

Thus, a cursory review of the bills in evidence reveals that Mr. Geraghty is not correct.

ComEd's evidence on this issue consisted largely in the form of testimony from its witness Mr. Geraghty, who contradicted himself more than once, and whose testimony, at times, did not make logical sense. For example, as King's Walk has pointed out, Mr. Geraghty testified that King's Walk's calculations were inaccurate because King's Walk did not account for cancellations and rebilling when the accounts in question were switched to a new rate. However, the record does not appear to contain evidence of these cancellations and re-billings and ComEd presented none. ComEd also does not cite to any of the voluminous bills in the record.

Further, Mr. Geraghty never stated that he actually reviewed King's Walk's electric bills. Because Mr. Geraghty was not a credible witness, his testimony regarding what occurred in relation to the King's Walk accounts was not considered.

⁸ The bills mentioned are a representative sampling. They are not all of the bills in evidence.

ComEd quibbles with the veracity of King's Walk Ex. 5.0, which is a large spreadsheet containing the calculations regarding overpayments on all of King's Walk's accounts for the time period in question. ComEd Posttrial Brief at 25. However, ComEd never objected to admission of this document into evidence; it has therefore waived its right to contest the propriety of this document. Additionally, it would have been a simple matter for ComEd, who issued the bills in question, to point out a few instances of cancellations and re-billings. This it did not do. Therefore, this document is the only evidence of the financial harm done to King's Walk due to the rate switching.

ComEd argues that King's Walk's calculations are incorrect because there should have been an offset of demand charges with distribution charges. Absent from ComEd's brief or the record, however, is any explanation as to the difference between the two sets of rates, or any explanation as to what impact this offset would have upon King's Walk's calculations. It is up to ComEd to establish the factual validity of its arguments/affirmative defenses. This it has not done. This argument does not aid ComEd.

In summation, ComEd did not proffer credible evidence that would contradict or explain the evidence that King's Walk presented. King's Walk's evidence establishes that it was billed incorrectly, as is set forth in King's Walk Ex. 5.0, from August of 2006 to the present. Through December of 2012, this overpayment is \$49,020.04.

The Interest Due on King's Walk's Refund Regarding Incorrect Rates

King's Walk calculated the interest due it at 4%. This is not correct. Interest is properly calculated on the customer deposit rate. 83 Ill. Adm. Code 280.70.⁹ The interest due it from August of 2006 to December 31, 2012 is as follows:

2006: at a rate of 4.5% from August through December 31, 2006: \$0.65

2007: at a rate of 5.00% with compounded interest from 2006: \$260.23

2008: at a rate of 3.5% with compounded interest from 2006 and 2007: \$469.12

2009: at a rate of 1.00% with compounded interest from 2006, 2007 and 2008: \$223.20

2010: at a rate of 0.50% with compounded interest from 2006 through 2009: \$157.48

2011: at a rate of 0.50% with compounded interest from 2006 through 2010: \$204.27

⁹ The Commission approves the rate annually. The rates used in this Order were approved in the following Docket Nos.: 2006, 4.5% in 05-0797; 2007, 5.00%, in 06-0809; 2008, 3.50%, in 07-0623; 2009, 1.00%, in 08-0679; 2010, 0.50%, in 09-0607; 2011, 0.50%, in 10-0719; 2012, 0%, in 11-0793, 2013, 0%, in 12-0686.

Since the Commission ordered interest rate for 2012 and 2013 is zero percent, no further interest is due. Therefore, the total amount of interest owed on the incorrect billing total of \$49,020.04 is \$ 1314.95.

b. Whether King's Walk Should Be Placed on One Account

King's Walk's Argument

King's Walk contends that ComEd has unlawfully refused to bill it on one bill, (account) instead of on seven separate billing accounts. It maintains that there are certain per-bill charges (meter charges) that will be reduced, if it received only one bill. King's Walk Posttrial Brief at 14-16.

ComEd's Argument

ComEd argues essentially that because King's Walk did not present evidence establishing any increase in cost due to billing on seven accounts, as opposed to one account, King's Walk is not entitled to any relief for this claim. ComEd Posttrial Brief at 23-24.

Analysis and Conclusions

The Commission agrees with ComEd that King's Walk did not present any evidence establishing an increase in cost due to its decision to bill King's Walk on seven accounts, as opposed to one account. While King's Walk argues that it would receive only one set of per-bill charges instead of seven, if it were billed on only one account, it presented no evidence establishing what those per-bill charges were.¹⁰

However, obviously, King's Walk desires to be billed on one account and ComEd refuses to do so. What ComEd refuses to acknowledge is that there are benefits besides financial benefits from having one bill. For example, it may have been easier for King's Walk to determine, during the years in question here, that it was being over-billed on some of its accounts, if it had one bill for its accounts because some of the rate switching did not occur at the same time. With one bill, the property manager, who pays the King's Walk electric bills, would be in possession of one document that listed all of the rates for the King's Walk accounts, which could make it easier for that person to determine whether these accounts were billed at the correct rate.

Additionally, King's Walk is the customer. That this customer might not have any financial advantage from something that ComEd is required to do is not a legal defense. It may be something that a customer service representative should advise about, but, if King's Walk desires to have one account, it should be allowed to do so. ComEd has proffered no legal or factual reason demonstrating that it was legally entitled to deny this request. ComEd shall bill King's Walk with one bill for all of the King's Walk accounts.

c. Rider CABA Credits

¹⁰ King's Walk did attach a chart to its Reply Brief that appears to be calculations regarding this claim. This chart was not admitted into evidence and it was not considered.

King's Walk's Position

King's Walk acknowledges that ComEd has issued Rider CABA credits in the amount of \$6,261.92. However, King's Walk argues that, due to miscalculations on the part of ComEd, it is entitled to additional Rider CABA credits. It posits that also, ComEd only issued Rider CABA credits for five of King's Walk's seven accounts. It points out that ComEd has admitted that two of the King's Walk accounts were overlooked when the credits issued. King's Walk Posttrial Brief at 11-12.

King's Walk continues on to state that Rider CABA credits are determined by calculating the (estimated) revenue that ComEd receives in 2007 from the customer at issue and subtracting the 2006 actual revenue from the 2007 projection in the following manner:

$$\text{Billing Adjustment} = 2007 \text{ Revenue} - (2006 \text{ Revenue} \times 1.24)$$

King's Walk Posttrial Brief at 13; see also ComEd Ex. 1.0. King's Walk maintains that therefore, Rider CABA provides for the Rider CABA calculation based on the customer's actual bills for 2006 and estimated bills for 2007. (Rider CABA became effective in May of 2007, making it applicable in June of 2007). However, King's Walk avers, Mr. Leick assumed that King's Walk's accounts were billed on Rate 14 during the entirety of 2006, which they were not. Also, he assumed that King's Walk was receiving a residential space heating discount beginning with the July of 2007 monthly bills. Finally, according to King's Walk, Mr. Leick assumed that the five accounts that he examined were not revised. King's Walk contends that ComEd still owes it \$5,053.89, excluding interest, for all of the outstanding Rider CABA credits. King's Walk Posttrial Brief at 13, 14.

ComEd's Position

ComEd is willing to credit King's Walk in the amount of \$1,830.86 in Rider CABA credits, for, what it asserts, is the amount due for the two overlooked King's Walk accounts regarding Rider CABA credits. However, with regard to King's Walk's claim that its Rider CABA credit calculations were based upon incorrect assumptions, it asserts that the Rider CABA formula is designed to ensure that charges for condominium associations do not increase by an amount that exceeds 24%. ComEd Posttrial Brief at 24-25. Additionally, ComEd avers that all of King's Walk's accounts were on Rate 14 through the entirety of 2006. See, ComEd Reply Brief at 8.

Analysis and Conclusions

With regard to the Rider CABA credits for the two "overlooked" accounts, ComEd acknowledges that it owes King's Walk these credits. Therefore, the fact that money is owed to King's Walk regarding these two accounts is not at issue.

What is at issue is the correctness of ComEd's Rider CABA calculations for all seven accounts. While ComEd avers that its Rider CABA calculations conform to the mathematical formula (above) in Rider CABA, the evidence does not support this argument. Mr. Leick's testimony establishes that he just assumed that King's Walk was on Rider 14 for the entirety of 2006, and that King's Walk was taking a space-heating

discount in portions of 2007. He also assumed that King's Walk was on Rate BES for certain period of time in 2007, and he made no attempt to ascertain the validity of his assumptions. In fact, he did not have access to ComEd's corrected bill images in ComEd's computer system. Tr. 306.

King's Walk points out that Rider CABA requires that these calculations must be made upon the then-effectives tariffs applicable to the customer. See, ComEd Ex. 1.0. ComEd avers that all of King's Walk's accounts were on Rate 14 through the entirety of 2006. See, ComEd Reply Brief at 8. While this statement is technically incorrect, it is in substance correct.

However, ComEd issued refund checks to King's Walk in July of 2006 which covered the time period from January 22, 2005 to July 20, 2006. See Amended Complaint filed on February 23, 2009, Ex. F. These refund checks represent the difference between Rate 14 (the correct rate at that time) and the commercial rate that ComEd was erroneously charging King's Walk. Thus, while technically, King's Walk was billed at a higher commercial rate for the first half of 2006, the refund checks negated any increase that the improper rate classification created. Thus, in substance, King's Walk was billed at Rate 14 for the entirety of 2006. Therefore, ComEd's figure for 2006 is the figures that shall be used for computing Rider CABA credits. (ComEd Ex. 1.0).

This does not end the enquiry. It is not disputed that Mr. Leick applied Rate BES-R to King's Walks' accounts for part of 2007. However, at least some, if not all, of King's Walk's accounts were not on this rate in 2007. Using ComEd's figures for 2006 and King's Walk's figures for 2007, the total Rider CABA credits is \$5,053.89.¹¹

Interest on Rider CABA Credits

Interest from June of 2007 to December 31, 2007, at a rate of interest of 5% is \$147.41.

Interest compounded from June of 2007, with interest at a rate of 3.50% through December 31, 2008 is \$182.05.

Interest compounded from June of 2007 through December 31, 2009 at a rate of interest of 1.00% is \$53.93.

Interest compounded from June of 2007 through December 31, 2010, at a rate of interest of 0.50% is \$27.19.

Interest compounded from June of 2007 through December 31, 2011, at a rate of interest of 0.50% is \$27.32.

Because the Commission-ordered interest rate for 2012 and 2013 is zero percent, no further interest is due. Therefore, the total amount of interest owed on the Rider CABA credit of \$5,053.89 is \$ 479.79.

¹¹ King's Walk Ex 6.0 deducts 2006 credits paid from 2007 credits owed.

V. Finding and Ordering Paragraphs

The Commission, having considered the entire record and being fully advised in the premises, is of the opinion and finds that:

- (1) Commonwealth Edison Company is a “public utility” within the meaning of the Public Utilities Act;
- (2) the Commission has jurisdiction over the parties and subject-matter jurisdiction;
- (3) the allegations in the Amended Complaint contesting the propriety of electric rates imposed on King’s Walk Condominium Association, as is set forth herein, are found to be meritorious;
- (4) Commonwealth Edison Company shall cease and desist from billing the King’s Walk Condominium Association at rates that do not reflect that King’s Walk takes space heat;
- (5) Commonwealth Edison Company shall cease and desist from billing the King’s Walk Condominium Association at rates that do not reflect that King’s Walk is residential property;
- (6) Commonwealth Edison Company shall refund King’s Walk \$49,020.04 , which represents overpayments made to Commonwealth Edison Company from August of 2006, through December of 2012, to King’s Walk Condominium Association within ten (10) days of the final Order in this docket in the form of a cashier’s check,
- (7) the interest on those over-billing charges, through December of 2012, is \$1,314.95; Commonwealth Edison Company shall tender this amount to King’s Walk Condominium Association within ten (10) days of the final Order in this docket in the form of a cashier’s check;
- (8) King’s Walk shall submit its electric bills and the total amount of those bills for January through March of 2013, within ten (10) days of the date of this Proposed Order, along with computations therefrom as to overcharges;
- (9) Commonwealth Edison Company shall cease and desist from billing King’s Walk Condominium Association’s accounts on separate bills; it shall present King’s Walk Condominium Association with one bill for all of its accounts;
- (10) within 10 days from the date of a final order in this docket, Commonwealth Edison Company shall issue King’s walk Condominium Association a credit, in the form of a cashier’s check, in the amount of \$5,053.89 with additional interest in the amount of \$ 479.79, which represents the amounts rider CABA credits that are due Kings Walk and the interest due on those credits, due to the fact that ComEd did not fully refund those credits.

- (11) the recitals of fact in the prefatory portion of this Order are supported by the evidence and are hereby adopted as findings of fact.

IT IS THEREFORE ORDERED that the Commonwealth Edison Company shall comply with Findings (4) through (10), except Finding (8).

IT IS FURTHER ORDERED that King's Walk Condominium Association shall comply with (8).

IT IS FURTHER ORDERED that pursuant to Section 10-113 of the Public Utilities Act this Order is final; it is not subject to the Administrative Review Law.

DATED: April 4, 2013
BRIEFS ON EXCEPTION DUE To Be Filed And Served By: April 18, 2013.
REPLY BRIEFS ON EXCEPTION, If Any, Due To Be Filed
And Served By: April 25, 2013.

Claudia E. Sainsot
Administrative Law Judge
Illinois Commerce Commission